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Bd. of Trs. of the Western States Insulators and Allied Workers Pension Plan, Western States
Insulators and Allied Workers Individual Account Plan, and Western States Insulators and Allied
Workers Health Plan, Western States Insulators and Allied Workers Pension Plan, Western
States Insulators and Allied Workers Individual Account Plan, and
Western States Insulators and Allied Workers Health Plan

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

WESTERN STATES INSULATORS AND
ALLIED WORKERS PENSION PLAN,
WESTERN STATES INSULATORS AND
ALLIED WORKERS INDIVIDUAL
ACCOUNT PLAN, WESTERN STATES
INSULATORS AND ALLIED WORKERS
HEALTH PLAN,

And,

BOARD OF TRUSTEES, WESTERN
STATES INSULATORS AND ALLIED
WORKERS PENSION PLAN, BOARD OF
TRUSTEES, WESTERN STATES
INSULATORS AND ALLIED WORKERS
INDIVIDUAL ACCOUNT PLAN, BOARD
OF TRUSTEES, WESTERN STATES
INSULATORS AND ALLIED WORKERS
HEALTH PLAN,

Plaintiffs,

v.

COMANCHE'S CONSTRUCTION, INC., a
Colorado Corporation,

Defendant.

CASE NO.

COMPLAINT

1 Western States Insulators and Allied Workers Health Plan (hereinafter the “Board”) are
2 fiduciaries within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A).

3 7. The Funds and the Board maintain their principal place of business at 7180 Koll
4 Center Parkway Suite 200 Pleasanton, California

5 8. Defendant Comanche’s Construction, Inc. (hereinafter “Defendant” or
6 “Comanche”) is a corporation existing under the laws of the State of Colorado with offices
7 located in Colorado. Defendant transacts business in the State of Colorado as a contractor or
8 subcontractor in the insulation industry. Defendant is an employer in an industry affecting
9 commerce within the meaning of Sections 3(5), 3(11), and 3(12) of ERISA, 29 U.S.C. §1002(5),
10 (11), and (12), and Section 2(2) of the LMRA, 29 U.S.C. §152(5).

11 9. Defendant is a signatory employer to a CBA which provides for payment of
12 contributions to the Funds. The CBA binds the defendant to the provisions of the Agreement
13 and Declaration of Trust that created the Plaintiffs Benefit Funds.

14 FACTS

15 10. Defendant entered into a CBA with International Association of Heat and Frost
16 Insulators and Allied Workers Local 28 (hereinafter “Union”). This CBA established the terms
17 and conditions of employment for heat and frost insulators employed by the Defendant.

18 11. Pursuant to Pension Fund Agreement and Declaration of Trust (hereinafter, “Trust
19 Agreement”), the Board or their authorized representative may require an employer to submit
20 any information, data, report, or documents that are reasonable, relevant to, and suitable for the
21 purpose of the administration of the Funds.

22 12. Defendant employed certain employees covered by the CBA.

23 13. After an audit was performed for the years 2016-2018, the auditors for the Funds
24 reported an underpayment of owed contributions.

25 14. On or about June 17, 2019, the auditors for the Fund provided Defendant notice of
26 the underpayment and requested payment.

27 15. To date, Defendant has failed to pay the reported underpayments.
28

1 16. On or about July 13, 2019, Counsel for the Funds requested additional documents
2 for the audit period of the year 2015 and 2019.

3 17. To date, Defendant has failed to submit the requested documents.

4 18. Pursuant to the Trust Agreement, an employer must immediately pay all amounts
5 found to be due and owing as a result of the audit as well as all costs incurred by the audit.

6 19. Pursuant to the Trust Agreement, the Board may file suit in order to compel the
7 conduct of the examination of the employer's books and records and the employer shall pay all
8 costs incurred by the Fund in connection with the examination, including by not limited to
9 attorneys' fees and costs in the filing and prosecution of the action to compel said examination.

10 20. Pursuant to the CBA, Defendant agreed to pay to the Funds certain sums of money
11 for each hour worked by employees of Defendant covered by the CBA.

12 21. Defendant failed to timely submit its contributions for services performed under
13 the CBA for hours worked during at least April through November 2019 .

14 22. Comanche submitted late payment for contributions owed in April through
15 September, 2019, resulting in accrued interest and liquidated damages.

16 23. The Funds notified Comanche of the delinquent contributions and accrued
17 liquidated damages and interest.

18 24. To date, Comanche has failed to submit payment for the month of November, as
19 well as payment for the accrued liquidated damages and interest.

20 25. Under the terms of the Trust Agreement, an employer who fails to make timely
21 contributions to the Plaintiffs Benefit Funds for employee fringe benefits is liable to Plaintiffs
22 Benefit Funds for all unpaid contributions, liquidated damages on the unpaid principal, interest
23 and attorney's fees and collection costs. See also, 29 U.S.C. §1132(g).

24 26. Pursuant to 29 U.S.C. §1132(g)(2), Plaintiffs are entitled to an amount equal to
25 the greater of:

- 26 (a) double interest; or
27 (b) interest plus liquidated damages.

1 FIRST CLAIM (Failure to Pay Contributions as Required By ERISA)

2 27. Plaintiffs hereby incorporate by reference each allegation contained in Paragraphs
3 1 through 26 as fully set forth herein.

4 28. This is an action to collect unpaid contributions found owing to a multi-employer
5 benefit plan pursuant to the terms of the Trust Agreement and the Collective Bargaining
6 Agreement.

7 29. The Defendant's action constitute a failure of an employer to make contributions
8 to a multi-employer plan, owed pursuant to 29 U.S.C. §1145.

9 30. Plaintiffs are entitled to judgment for all unpaid contributions, liquidated
10 damages, prejudgment interest and reasonable attorney's fees and costs pursuant to 29 U.S.C.
11 §1132(g)(2).

12 SECOND CLAIM (Breach of Contract)

13 31. Plaintiffs hereby incorporate by reference each allegation contained in Paragraphs
14 1 through 30 as fully set forth herein.

15 32. This is an action to enforce a Collective Bargaining Agreement pursuant to 29
16 U.S.C. §185(a).

17 33. The Defendant's failure to pay contributions owing breached the Collective
18 Bargaining Agreement between the Defendant and the Plaintiffs to the detriment of the Plaintiffs.
19 Plaintiffs are entitled to damages, liquidated damages, interest, attorney's fees and costs pursuant
20 to the Collective Bargaining Agreement.

21 34. The Plaintiffs are entitled to pursue this claim as a third party beneficiary to the
22 Trust Agreement pursuant to Schneider Moving & Storage Co. v. Robbins, et al. 466 U.S. 364,
23 104 S.Ct. 1844 (1984).

24 THIRD CLAIM (Audit Entry Under ERISA)

25 35. Plaintiffs hereby incorporate by reference each allegation contained in Paragraphs
26 1 through 34 as fully set forth herein.

